



THE ASSEMBLY
STATE OF NEW YORK
ALBANY

CHAIR
COMMITTEE ON CITIES

COMMITTEES
CODES;
CORPORATIONS,
AUTHORITIES,
AND COMMISSIONS;
EDUCATION;
REAL PROPERTY
TAXATION

JAMES F. BRENNAN
44TH ASSEMBLY DISTRICT
KINGS COUNTY

October 20, 2008

Speaker Christine Quinn
Joseph P. Parkes, S.J., Chair, Campaign Finance Board
Members of the City Council and the Campaign Finance Board

Dear Colleagues in Government,

I am writing to ask you to address a variety of inequities and distortions in the City's campaign finance law, some of which could be aggravated if the Council votes to extend term limits. Before I share my view on that subject, I want you to know I oppose the term limits extension. A recent article by the well-known election lawyer, Laurence Laufer, former counsel to the Campaign Finance Board, expresses the view that the City Council can amend the term limits law with respect to the executive branch of government, the borough presidents and the citywide offices, but cannot amend the term limits law with respect to itself, because that would violate the Municipal Home Rule Law. Certainly Sec. 23 of the State's Municipal Home Rule Law clearly states that a legislative body may not change membership or composition* except by mandatory referendum. The Council might find itself in the unusual position of passing a law extending term limits for the Mayor and the Council, only to find the courts nullify the extension with respect to the Council, or with respect to all the offices. Extending term limits now, so late into the 2009 election cycle, threatens to create a divisive, chaotic election with legal challenges, competing referendums, and other distractions. It would be wiser to keep the law in place.

A term limits extension would also cause an upheaval in the City's fair elections law, the public campaign finance program. The campaign finance law is premised on the idea that candidates who can demonstrate substantial grass-roots support from individual contributions can receive public funds so that they can have a fair opportunity to compete for office. The public funds counterbalance the undue influence on elections presented by contributions from special interests and the wealthy. In exchange for the public funds, candidates agree to limit their spending, so that candidates compete on a relatively level playing field in which they have comparable amounts of money to spend, giving them a fair chance to present their candidacies to the voters.

* Modification from email letter to you (10/17/08)

The current law works well for vacancies in the City Council, but poorly in relation to its egalitarian democratic ideals for the higher offices of borough presidents and citywide offices. That is because the contribution limits are overly generous, allowing a disproportionate amount of money from special interests and the wealthy to dominate the system. Candidates can amass overwhelming war chests prior to the receipt of public funds; the thresholds to qualify for public funds are high; and the public funds arrive too late in the game to compensate for the advantages of the accumulated war chests.

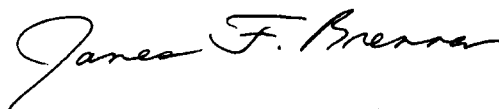
As of the July 2009 CFB filing, 13 members of the Council have war chests that exceed the \$160,000 spending cap for City Council office. Many of them were running for higher office so that fact is not unusual. But many of them have already spent funds in excess of that spending cap. They could choose not to participate in the public funds system, use their war chests, and have major advantages over their opponents. Their opponents would then be entitled to opt out of the campaign finance system and the spending restrictions. The entire construct of the campaign finance system, getting candidates to agree to spending caps, would be undermined. Alternatively, most candidates facing incumbents would simply give up, not run, and wait for 2013.

Proposals to allow incumbents “fresh starts,” enabling them to convert their 2009 accounts to 2013 accounts, freezing those accounts, and then allowing incumbents to create new City Council office accounts, create opportunities to get campaign contributions from many donors who have already given beyond the maximum \$2,750. This is potentially deeply unfair and deserves very careful review. It might be fairer to attribute the Councilmember’s spending in part to the higher office, return excess contributions above the \$2,750 cap, and allow a modest increase in the spending cap, than to allow “fresh start” accounts.

Public matching funds should increase for candidates facing opponents who are not participating. The most obvious is the mayoralty; under current law, the maximum public funds a mayoral candidate may receive when confronted with a non-participating opponent is \$7.7 million, and that applies when the nonparticipants’ spending exceeds triple the spending cap, or more than \$18 million. Obviously the law never contemplated Mayor Bloomberg, who spent more than 14 times the spending cap in the last election, or \$85 million. The maximum a Council candidate can receive in the face of an opponent spending triple the spending cap is \$201,000. The additional sums need to be increased in relation to various multiples of the spending cap.

These are just a few of the problems raised by the extension of term limits; there are many more. I urge the Council and the CFB to conduct hearings on the campaign finance law, both in relation to its current application and in relation to an extension of term limits. Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "James F. Brennan". The signature is written in black ink and is positioned above the printed name.

Assemblymember James F. Brennan